No. 77-1575

In the Supreme Court of the United States

OCTOBER TERM, 1977

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

MIDWEST VIDEO CORPORATION, ET AL., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Federal Communications Commission respectfully asks this Court to issue a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A)* is not yet reported. The orders of the Federal Communications Commission (Apps. B and C) are reported at 59 FCC 2d 294 and 62 FCC 2d 399.

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* The appendices to this petition are set forth under separate cover.

JURISDICTION

The judgment of the court of appeals was entered on February 21, 1978. A stay of mandate was granted by the court by order dated April 4, 1978 (App. D), and this petition for certiorari is being filed within the time allowed by the order staying the mandate. This Court has jurisdiction by virtue of 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Whether the imposition by the Federal Communications Commission of access, channel capacity and equipment requirements on cable television systems which have 3500 or more subscribers, and which carry broadcast signals, is within the Commission's regulatory authority over cable television as previously interpreted by this Court.

Whether the Commission's effort to apply an access requirement to the cable television industry as an important component of the agency's regulatory scheme is permissible under the First and Fifth Amendments.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First and Fifth Amendments are set forth at the end of this petition. Sections 1, 2(a), 3(h), 303(g), 303(r) and 307(b) of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U.S.C. §§ 151, 152(a), 153(h), 303(g), 303(r) and 307(b), are set forth in App. E.

STATEMENT

This petition seeks review of an opinion and judgment whereby the Eighth Circuit Court of Appeals set aside an order in which the Federal Communications Commission amended its access, channel capacity and equipment rules for cable television systems.

A. Background

The Commission's jurisdiction over cable television, at least insofar as its regulation of cable is "reasonably ancillary" to its regulation of the broadcast industry, was upheld by this Court in 1968. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) (hereafter "*Southwestern*"). The following year, the Commission required all cable systems which had 3500 or more subscribers, and which carried broadcast signals, to engage in "cablecasting" and to have equipment available for the production and presentation of local programming. Former rule § 74.1111(a), later § 76.201; *see First Report and Order in Docket 18397*, 20 FCC 2d 201 (1969). This "origination" rule was ultimately affirmed in *United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972) (hereafter "*Midwest Video I*"). By that time, however, the Commission had also adopted an "access" rule. Specifically, in 1972, the Commission required all cable operators in the top 100 markets to build their systems with at least 20-channel capacity and to designate four of those channels for public, governmental, educational and leased access respectively. All cable systems commencing operation after March

31, 1972 were to comply immediately, while those which had begun operating prior to that date were generally grandfathered until March 31, 1977. Former rule § 76.251 (App. F); *see Cable Television Report and Order* (Dockets 18397 *et al.*), 36 FCC 2d 143, 189-98 (1972). That rule was also affirmed. *American Civil Liberties Union* v. *FCC*, 523 F.2d 1344 (9th Cir. 1975).

In 1974, the Commission repealed its origination rule on the ground that access was a less burdensome but equally effective means of promoting localism and diversity. *Report and Order in Docket 19988*, 49 FCC 2d 1090, 1099-1100 (1974). However, the Commission retained its equipment availability requirement so that facilities would be available for the production of access programming. Former rule § 76.253; *see id.* at 1107-08, 1110-1111.

B. The Commission's Order

As the Commission gained further experience with its access rules, it recognized that it would have to weigh its commitment to access against the economic realities involved in rebuilding older cable systems to meet agency requirements. The Commission therefore instituted two more rulemaking proceedings. The first, Docket 20363, resulted in an order cancelling the March, 1977 compliance deadline. *Report and Order in Docket 20363*, 54 FCC 2d 207 (1975). The second, Docket 20508, led to an order in which the Commission reaffirmed its access policy but relaxed its rules substantially. *Report and Order in*

Docket 20508, 59 FCC 2d 294 (1976) (App. B). It is the latter order which is the subject of this litigation.[1]

Essentially, the Commission amended its rules in three major respects. First, it changed its criterion for determining where access and channel capacity requirements would be imposed. Instead of the "top 100 markets" standard, the Commission elected to use the same 3500-subscriber "trigger" for access that it had previously employed for origination (App. B, 105-08, 111-20). Second, the Commission decided that multiple channels need be devoted to access only to the extent that demand existed for their full time use, and then only if a system had sufficient activated channel capacity (App. B, 139-41 & n. 18). Third, in order to minimize the need for cable operators to rebuild existing systems prior to their becoming "naturally" obsolete, the Commission determined that such systems would not have to comply with the 20-channel requirement until June, 1986 (App. B, 148-161).[2] On reconsideration, the Commission affirmed its order with minor clarifications (App. C).

C. The Decision Below

Midwest Video Corporation, which had become subject to access requirements for the first time due to

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[1] The Commission's order in Docket 20363 has been challenged in *National Black Media Coalition* v. *FCC*, No. 75-1792 (D.C. Cir.), a case held in abeyance pending the outcome of this proceeding.

[2] The text of the rules as amended appears at App. B, 168-77. The changes discussed above were embodied in §§ 76.252, 76.254 and 76.256.

the adoption of the 3500-subscriber "trigger," sought appellate review of the Commission's order pursuant to 47 U.S.C. § 402(a). In an opinion filed February 21, 1978 (App. A), the United States Court of Appeals for the Eighth Circuit set aside the access, channel capacity and equipment availability rules as beyond the Commission's jurisdiction. The court said that the Commission lacked authority to adopt these rules because neither Title II of the Communications Act (common carrier regulation) nor Title III (broadcast licensing) encompassed cable television or expressed any Congressional intent regarding it. In addition, the court stated that the access rules did not satisfy the "reasonably ancillary" test of *Southwestern* and *Midwest Video I*, since they had nothing to do with the welfare of television broadcasting and had no corollary in broadcast regulation. Finally, the court below held that, since access was common carrier regulation which, in the court's view, could not be applied to broadcasters, it was also an impermissible imposition on cable operators (App. A, 20-64).

A majority of the court of appeals also addressed the constitutionality and reasonableness of the rules. While it declined to rest its result upon its observations about these issues, the majority said that the rules violated the First Amendment editorial rights of cable entrepreneurs, constituted a "taking" without due process and lacked an articulated rationale (App. A, 64-91).

REASONS FOR GRANTING THE WRIT

A. The Jurisdictional Question

In deciding the jurisdictional question in this case, the court of appeals overlooked Section 2(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 152(a), as the source of the Commission's claimed regulatory power over cable television. Instead, it read the Commission as having sought to derive its regulatory power from the objectives it was pursuing. The court below then concluded that "objectives do not confer jurisdiction" (App. A, 20 and 36-45). This resolution of the jurisdictional question conflicts with this Court's decisions in *Southwestern* and *Midwest Video I*, *supra*.

In *Southwestern*, this Court held that cable television systems engage in "interstate communication by wire or radio" within the meaning of Section 2(a) of the Act, and consequently, that the Commission has regulatory jurisdiction over cable television, at least insofar as its regulation is "reasonably ancillary" to its regulation of the broadcast industry. 392 U.S. at 172-73 and 178. Thereafter, the Commission adopted a program origination rule requiring cable systems which carried broadcast signals and had 3500 or more subscribers "[to operate] to a significant extent as a local outlet by cablecasting" and "[to have] available facilities for local production and presentation of programs other than automated services." Former rule § 74.1111(a), *supra*. Midwest Video challenged the Commission's action, and the

court below set aside the program origination rule as outside the Commission's authority. *Midwest Video Corp.* v. *United States*, 441 F.2d 1322 (1971). By a split decision, this Court reversed. *Midwest Video I*, *supra*.

Mr. Justice Brennan's opinion, which expressed the views of four members of the Court, held that cablecasts, including those only local in nature, are within the Commission's jurisdiction under Section 2(a) of the Act when transmitted over cable television systems which also carry broadcast signals. 406 U.S. at 662-63 & n.21. Only after finding that Section 2(a)'s requirement for Commission jurisdiction had been satisfied did the plurality of this Court proceed to consider the Commission's objectives in adopting a program origination rule. This further step was necessary because "§ 2(a) does not in and of itself prescribe any objectives for which the Commission's regulatory power over [cable television] might properly be exercised." *Id.* at 661. The Commission's objectives in *Midwest Video I*, namely "increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services,"[3] were approved as proper goals for the Commission to pursue in regulating, not only broadcasting, but cable television as well. *Id.* at 667-68.[4]

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[3] *Id.* at 668, quoting from *First Report and Order*, *supra*, 20 FCC 2d at 202.

[4] The plurality noted that the Commission derived these objectives from Sections 1, 303(g) and 307(b) of the Communications Act, 47 U.S.C. §§ 151, 303(g) and 307(b). *Id.* at 669-70.

In sum, the plurality in *Midwest Video I* agreed with the Commission that the agency's concern with cable systems' carriage of broadcast signals was not simply a matter of avoiding adverse effects on local television, *id.* at 664, but properly extended, under the "reasonably ancillary" test, to regulations which call upon those cable systems that carry broadcast signals "to promote the objectives for which the Commission ha[s] been assigned jurisdiction over broadcasting." *Id.* at 667.[5]

Under the analysis in *Midwest Video I*, the court below was not justified in holding that the access and related rules were beyond the Commission's authority. For those rules, both in their original form as adopted in 1972 and as modified in 1976 in the order at issue below, were adopted for the express purpose of "increasing the number of outlets for local self-expression and augmenting the diversity of programs and types of services available to the public."[6] And

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[5] The Chief Justice concurred in the result in *Midwest Video I*. His separate opinion stated, *inter alia*, that "until Congress acts, the Commission should be allowed wide latitude" to regulate cable television systems which "interrupt" broadcast signals and "put [them] to their own use for profit." *Id.* at 676 (concurring opinion).

[6] App. B, 103; *see also Cable Television Report and Order*, *supra*, 36 FCC 2d at 190. Although the program origination rule spoke in terms of programming to be originated by the cable system itself, the accompanying *First Report and Order*, *supra*, declared that one of the Commission's purposes in adopting the origination requirement was "to insure that

the court below agreed that "[t]here is no question that public access necessarily increases outlets and augments choices" (App. A, 39 & n.45).[7]

Even assuming, for purposes of argument, that the Eighth Circuit's analysis of the jurisdictional question might ultimately be reconciled with *Midwest Video I*, the court below, at the very least, has gone beyond *Midwest Video I* and decided an important question which has not been, but should be, addressed by this Court. Specifically, the court below would limit the Commission's regulatory authority over cable television to only those means of regulation which are employed in the broadcasting area. This is apparent from the court's extended discussion of what the Court perceives as the Commission's statutory inability[8] to impose an access requirement on

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cablecasting equipment will be available for use by others originating on common carrier channels." 20 FCC 2d at 214. This Court in *Midwest Video I* was well aware of the linkage, under the Commission's developing cable policies, between origination and access requirements. *See* 406 U.S. at 653 nn.5-6, 654 & n.8.

[7] It was precisely because an access policy was regarded as a "more appropriate means to foster local programming than imposing mandatory programming requirements on [cable] system operators . . ." that the Commission decided to repeal its origination rule (App. B, p. 119 & n.7).

[8] The court bases its conclusion that the Commission cannot require mandatory access of broadcasters on this Court's decision in *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94 (1973) (hereafter *CBS* v. *DNC*), and on Section 3(h) of the Communications Act, 47 U.S.C. § 153(h) (App. A, 52-53 n.58 and 59-64). However, this Court in *CBS* v. *DNC*, although well aware of the existence of Section 3(h), which declares that broadcasters are not to be deemed common carriers, did not say that Section 3(h) would prohibit the Commission from imposing a limited right of access upon broadcasters. Instead, this Court said that Congress had chosen to leave questions of access "with the Commission, to which it has given the flexibility to experiment with new ideas as changing conditions require." 412 U.S. at 122; *see also id.* at 105-109. Moreover, the Court concluded its opinion by adverting to the possibility that the Commission might devise "at some future date" a "limited right of access that is both practicable and desirable." *Id.* at 131.

broadcasters (App. A, 34-35 & n. 39, 51-53, 59-64), and also from the court's repeated emphasis on the fact that the origination rule upheld in *Midwest Video I* only required cable systems "to act like broadcasters" (App. A, 30), and "[to] do what broadcasters do" (App. A, 28).

It is of course correct that the Commission, with this Court's approval, has thus far decided, in the broadcasting context, that "on balance the undesirable effects of [a] right of access . . . outweigh the asserted benefits." *CBS* v. *DNC*, *supra*, 412 U.S. at 122. But nothing in this Court's decision in *Midwest Video I* denies the Commission's discretion to conclude that, although the statutory objectives are the same for both broadcasting and cable television, appropriate methods for pursuing those objectives may differ between the two services.[9] The opinion below,

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[9] In contrast to broadcasting, where technological scarcity exists, both this Court and the Commission have recognized that cable television offers the technological potential of a "multichannel capacity" which can be utilized to provide a variety of new programming and other communications serv-

if not constituting an outright conflict with *Midwest Video I*, at a minimum goes beyond that case when the court holds that "[the broadcasting] context . . . limits the *means* by which [valid] goals may be sought" (App. A, 34-35 (emphasis added)).

The holding of the court below that the access rules do not satisfy the "reasonably ancillary" test, which measures the Commission's jurisdiction over cable television, also conflicts directly with the holding of the Ninth Circuit in *American Civil Liberties Union* v. *FCC*, *supra*, 523 F.2d 1344 (1975). There, although the matter was raised in the context of complaints that the 1972 access rule did too little, in contrast to Midwest Video's arguments below, the Ninth Circuit held:

> The Commission's failure to impose common carrier obligations on access channels *and its imposition of the [1972 access rule] . . . are actions 'reasonably ancillary to the effective performance of [its] various responsibilities for the regulation of television broadcasting.'* 523 F.2d at 1351 (emphasis added).[10]

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ices, without use of the scarce broadcast spectrum. *Midwest Video I, supra*, 406 U.S. at 651, quoting from *Notice of Proposed Rulemaking and Notice of Inquiry* (Docket 18397), 15 FCC 2d 417, 419-421 (1968).

[10] In *Brookhaven Cable TV, Inc.* v. *Kelly*, —— F.2d —— (1978), the Second Circuit has upheld the Commission's authority to preempt state and local regulation of the prices charged by pay cable systems offering specialized programming for which a per-program or a per-channel charge is made. The court read this Court's decision in *Midwest Video I* as approving the FCC's regulation of cable television "if its regulation will further a goal which it is entitled to pursue in the broadcast area." Slip Opinion in Case Nos. 77-6156 and 6157, decided March 29, 1978, at 2164. In finding that the preemption of pay cable rate regulation met this test, the court declared that "a policy of permitting development free of price restraints at every level is reasonably ancillary to the objective of increasing program diversity . . . ." *Id.*

B. Constitutional Issues

A majority of the court below[11] said that First Amendment and other constitutional considerations reinforced its conclusion on the jurisdictional issue (App. A, 65). Although it refrained from deciding this case on constitutional grounds, the majority clearly indicated that, if it had been necessary to reach the matter, it would have found the access rules "constitutionally impermissible" (App. A, 74).

The majority said that "no nexus exists between [cable's] function of retransmitting broadcast signals and the distinct function of cablecasting" (App. A, 68-69, citing *Teleprompter Corp.* v. *Columbia Broadcasting System, Inc.*, 415 U.S. 394 (1974)). According to the majority, cablecasting is "private electronic 'publication'" (App. A, 74), and the Commission's effort to compel access to cable television should fare no better than the earlier unsuccessful governmental attempt to compel access to a newspaper (App. A, 72-74, citing *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974)).

The rejection below of a nexus between broadcast signal retransmission and cablecasting is directly

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[11] Judge Webster did not join Parts II and III of the opinion below (App. A, 91-92).

contrary to the plurality opinion in *Midwest Video I*, *supra*, which held that there were "interdependencies" between broadcast retransmissions over cable systems and cablecasts over those same systems. 406 U.S. at 662-63 & n.21. Similarly, the concurring opinion of the Chief Justice in *Midwest Video I* observed that cable television systems were "dependent totally on broadcast signals." *Id.* at 675.

With respect to the reliance below upon *Miami Herald* v. *Tornillo*, the holding in that case followed "our accepted jurisprudence" concerning the relationship between "government and the *print* media." 418 U.S. at 259 (concurring opinion of Mr. Justice White) (emphasis added). This Court has not yet addressed the question of the status of cable television systems under the First Amendment,[12] although several circuits have upheld, against a First Amendment challenge, limitations imposed by the Commission on the right of cable systems to carry certain broadcast signals.[13] However, this Court has distinguished under the First Amendment between the electronic broadcast media and the print media.

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[12] This Court has noted the existence of the 1972 cable access rule, without any indication that it might be constitutionally suspect. *CBS* v. *DNC*, *supra*, 412 U.S. at 131.

[13] *E.g.*, *Black Hills Video Corp.* v. *FCC*, 399 F.2d 65, 69 (8th Cir. 1968); *Conley Electronics Corp.* v. *FCC*, 394 F.2d 620, 624 (10th Cir.), *cert. denied*, 393 U.S. 858 (1968); *Titusville Cable TV, Inc.* v. *United States*, 404 F.2d 1187, 1189-90 (3d Cir. 1968); *Great Falls Community TV Cable Co.* v. *FCC*, 416 F.2d 238, 240-42 (9th Cir. 1969).

Compare Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 (1969) (political-editorial and personal attack rules, providing for a right of reply on broadcasting stations, upheld) with *Miami Herald Publishing Co.* v. *Tornillo*, *supra*."[14] The present case thus presents an opportunity, assuming the Commission is successful in its jurisdictional argument, for this Court to decide whether a First Amendment prohibition on a governmental effort to impose access upon a private medium not subject to extensive regulation, *i.e.*, newspapers, also extends to the Commission's attempt to apply an access requirement to cable television, a medium subject to a "necessarily pervasive" regulatory scheme. *Midwest Video I*, 406 U.S. at 662-63 & n.21, quoting from *General Telephone Co. of Cal.* v. *FCC*, 413 F.2d 390, 401 (D.C. Cir.), *cert. denied*, 396 U.S. 888 (1969).[15] This ques-

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[14] This Court has also recognized that the electronic broadcast media present "special" problems in several other cases including *Va. Pharmacy Bd.* v. *Va. Consumer Council*, 425 U.S. 748, 773 (1976); *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 384 (1977); and *First National Bank of Boston* v. *Bellotti*, 46 U.S.L.W. 4371, 4378 n.30 (1978). In addition, Congress has equated cable television systems with broadcasting stations in at least two instances which impinge heavily on First Amendment rights. Both cable systems and broadcasters are subject to the equal time requirement in the Communications Act. *See* 47 U.S.C. § 315(f)(1)(A). Similarly, the statutory prohibition on cigarette advertising is applicable not only to broadcasters, but to "any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission." 15 U.S.C. § 1335.

[15] The Commission does not seek review of that aspect of the opinion below which sets aside the provision in the rules,

tion is an important one, which this Court should settle, for, under the First Amendment rationale of the court below, the Commission, (or, for that matter, the Congress) [16] is constitutionally barred from requiring, in a reasonable manner, that cable television's technological capacity be developed to overcome limitations on program diversity, which are inherent in the broadcast spectrum.[17]

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which has been stayed since August 26, 1977, whereby cable operators were required "to exercise prior restraint of obscenity [or indecency]" over access channels (App. A, 72 & n.73, 75-77). As the court below recognized, the Commission, on its own initiative prior to the decision below, had instituted a review of the "prior restraint" provisions of the access rules (App. A, 16-17 & n.19, 72 & n.73).

[16] Moreover, if, as the majority below suggests (App. A, 72-74), cable television systems are truly "private electronic" media, entitled to the same rights afforded newspapers under *Tornillo, supra,* it would seem that any imposition by state or local governmental authorities of an access requirement, as a condition of granting a franchise to operate a cable system, would also run afoul of the First Amendment.

[17] The majority below also indicated that the access rules raised serious constitutional questions under the due process clause (App. A, 77-82). Specifically, the majority appears to have resurrected the holding of the same court in the earlier case involving the program origination rule. There the court had held that the Commission could not require cable operators "as a condition to [their] right to use . . . captured [broadcast] signals in their existing franchise operation to engage in the entirely new and different business of originating programs." *Midwest Video Corporation* v. *United States, supra,* 441 F.2d at 1327. In subsequently reversing the court of appeals, the plurality opinion in this Court said that its resolution of the "reasonably ancillary" issue in favor of the Commission's jurisdiction was dispositive of Midwest Video's

C. Importance of the Case

Since Commission regulation of the industry began in 1965, cable television has grown phenomenally. Currently, there are over 4000 cable systems serving 12.9 million subscribers, or the equivalent of 17.6% of the nation's television homes.[18] Moreover, as this Court recognized in *Midwest Video I*, "[t]he potential of the new industry to augment communication services now available is equally phenomenal," because of the "multichannel capacity" which enables

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additional claim that it was wrongly being asked to go into a new and different business. 406 U.S. at 658 & n.15, 663-64 & n.22. Moreover, the court below, just as the same court had done in the earlier origination case, *see* 441 F.2d at 1325, 1327-28, *see also id.* at 1329 (concurring opinion), characterized the Commission's access regulations as burdensome, requiring vast expenditures by cable operators and likely increases in the charges assessed against cable subscribers (App. A, 77-79). However, it is "plainly incorrect" to set aside regulations on constitutional grounds merely because those regulations may, to some cable operators, seem confiscatory. *Midwest Video I,* 406 U.S. at 658 & n.16; *see also id.* at 673-74 & n.31. Similarly, it is "beyond the competence of the [c]ourt of [a]ppeals . . . to assess the relative risks and benefits of cablecasting," *id.* at 674, whether that cablecasting takes the form of origination programming, at issue before, or access programming, which is now in issue.

[18] *Television Digest,* Vol. 18, No. 13, March 27, 1978 (totals as of January 1, 1978). By September 1, 1977, 465 systems possessed 13 to 20 channel capacity; 501 systems had over 20 channel capacity. The growth of cable systems offering pay cable programming—*i.e.*, entertainment and sports for which a per-channel or per-program additional monthly fee is charged—has been explosive: from 97 systems in 1975 to 530 in 1977. *See TV Factbook,* Services Vol. 47 (1978 ed.) 73a-76a; *Id.*, Services Vol. 45 (1976 ed.), 73a-75a.

cable systems to add to the number of outlets of communication and to increase the diversity of public program and service choices. 406 U.S. at 651.[19]

Cable's growth and potential demonstrate the need for unified regulation integrating that service into the national telecommunications structure. Congress intended the Commission to have sufficient authority to facilitate the orderly assimilation of new developments, such as cable television. *Southwestern*, 392 U.S. at 172-173; *Midwest Video I*, 406 U.S. at 660-61; *see also General Telephone of California* v. *FCC*, *supra*, 413 F.2d at 398. If the decision below is permitted to stand, that unified regulation of the important medium of cable television will be seriously jeopardized.

The Commission has properly exercised both its authority and discretion in developing its access policy. Its rules provide for precisely the kind of "practicable and desirable" access procedures mentioned by this Court in *CBS* v. *DNC*, *supra*, with specific reference to the 1972 access rules. 412 U.S. at 131. The decision of the court below eliminates the Commission's role in formulating uniform and reasonable access standards, and opens the door for disparate

[19] In one of the Commission's earliest discussions of the possibility of an access requirement, it observed that cable television offers the promise of "20-40 or more" programming channels. The Commission added that, from the standpoint of diversity of programming sources, "it seems beyond dispute that one party should not control the content of communications on so many channels into the home." *First Report and Order*, *supra*, 20 FCC 2d at 205.

local or state regulation of the vital access aspect of cable television's development.[20] Thus, this case presents a question of great importance as to the Commission's capacity to implement its statutory mandate and integrate new media into the national communications structure.

CONCLUSION

The Court should grant the writ of certiorari.

Respectfully submitted.

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[20] This assumes, of course, that state or local regulation of access requirements would be constitutionally permissible. *See* n.16, *supra* at 16.

CONSTITUTIONAL PROVISIONS

AMENDMENT I

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

AMENDMENT V

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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